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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/501,793 02/10/00 PARRISH

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EXAMINER

TM02/0629

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FISCHER, A

ART UNIT

PAPER NUMBER

2167

DATE MAILED:

06/29/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/501,793

Applicant(s)  
Rob G. Parrish

Examiner  
Andrew J. Fischer

Art Unit  
2167



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 14, 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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## DETAILED ACTION

### *Acknowledgments*

1. The amendment filed June 14, 2001 (Paper No. 6) is acknowledged. Accordingly, claims 1-58 remain pending.

### *Claim Rejections - 35 USC § 112 1<sup>st</sup> Paragraph*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 39 is alternatively rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitations, "for insertion through all of the receptacle and for engagement with the mounting member" are functional limitations with the prior art must be capable of meeting. The Examiner will never be able to find prior art where "a block is positioned for insertion through *all* of the receptacle . . . . [Emphasis added.]" Since, for example, the side walls are part of the receptacle, the prior art must be capable of positioning for insertion through the side walls. Conversely, the Examiner however has found prior art where the block is positioned for insertion through *some* of the receptacle. Therefore the claim

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limitation goes beyond what is found in the specification and is rejected upon a lack of support in the written description.

The Examiner notes that if Applicant expressly states on the record that the functional limitations are to be given little patentable weight (as is the position of the Examiner), the 35 U.S.C. 112 1<sup>st</sup> paragraph will be withdrawn.

***Claim Rejections - 35 USC § 112 2nd Paragraph***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 37-58, are alternatively rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claim 37, it is still unclear whether the applicant is claiming the subcombination of a device or the combination of a device and a storage compartment. Applicant's arguments regarding the use of the claimed device require this rejection to be maintained.

If the applicant's intent is to claim only the subcombination, the body of the claim(s) must be amended to remove any positive recitation of the combination. If the applicant intends to claim the combination, the preamble of the claim must be amended to be consistent with the language in the body of the claim.

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It is the Examiner's position that the limitations "for use with a storage compartment for a vehicle having a receptacle and for use with a trailer hitch mounting apparatus, the mounting apparatus having a male trailer hitch mounting member" are functional limitations which are given little patentable weight thereby placing any such positive structural limitations found within this phrase to be outside the claim's scope. In addition to the above, if Applicant(s) concur with the Examiner's position, the Examiner respectfully requests Applicant(s) to explicitly state their concurrence on the record. Upon receiving such concurrence, the 35 U.S.C. §112 second paragraph rejection will then be withdrawn. This is the Examiner's principal position on this matter.

Alternatively, if Applicant argues that the limitation should be given greater patentable weight requiring the Examiner to show the prior art having such structural features, the 35 U.S.C. §112 second paragraph rejection will be maintained. This is the Examiner's alternative position on this matter.

b. In claim 39, it is unclear how a block may be positioned "for insertion *through all* of the receptacle" since its block may not go through the sides of the receptacle. Emphasis added.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-7, 9, 10, 37-43, and 45-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Klemetsen (U.S. 5,476,297). Klemetsen discloses an apparatus with the following: a mounting portion (2); and a mounting portion receptacle (4); a block (inherent since it goes through 16); a friction member connected to the receptacle (inherent, the block as a bolt or pin); threads (on 18) positioned to engage the mounting member (figure 4); the mounting portion is fixed or movably attached to the receptacle (inherent since it may be welded, the weld cut, and rewelded); the mounting portion comprises a substantially flat member (the step above 4 in figure 1); and the mounting portion includes holes (figure 4).

8. Functional recitation(s) using the word “for” (e.g. “for insertion through at least a portion of the receptacle”) have been given little patentable weight because they fail to add any structural limitations and are thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. *In re Casey*, 152 USPQ 235 (CCPA 1967); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

9. Although Applicant(s) use “means for” in the claim(s) (e.g. claim 29), it is the Examiner’s position that the “means for” phrase(s) do not invoke 35 U.S.C. 112 6<sup>th</sup> paragraph. If Applicant(s) concur, the Examiner respectfully requests Applicant(s) to either amend the claim(s)

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to remove all instances of “means for” from the claim(s), or to explicitly state on the record why 35 U.S.C. 112 6<sup>th</sup> paragraph should not be invoked.

Alternatively, if Applicant(s) desire to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph, the Examiner respectfully requests Applicant(s) to expressly state their concurrence on the record. Upon receiving such express invocation of 35 U.S.C. 112 6<sup>th</sup> paragraph, the “means for” phrase(s) will be interpreted as set forth in the *Supplemental Examination Guidelines for Determining the Applicability of 35 USC 112 6<sup>th</sup>*.<sup>1</sup>

Failure by Applicant(s) to address the 35 U.S.C. 112 6<sup>th</sup> paragraph issues in the manner set forth above or to be non-response to this issue entirely will be considered a desire by Applicant(s) NOT to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 11-20 and 47-56 as understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Klemetsen. Klemetsen discloses as discussed above and

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<sup>1</sup> Federal Register Vol 65, No 120, June 21, 2000.

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does not directly disclose cylinders. However, the Examiner takes Official Notice that cylinders (as bolts or pins) are old and well known in the art to attach to items together. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klemetsen to include cylinders as bolts or pins threadedly connecting the mounting portion. Such a modification would have made connection between the two easier to disconnect.

12. Since Applicants did not seasonably traverse the Official Notice statement(s) as stated in the previous Office Action (Paper No. 5), the well known statement(s) are taken to be admitted prior art. See MPEP §21440.03 or *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

13. Claims 8 and 44, as understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Klemetsen in view of Francisco (U.S. 4,991,865). Klemetsen discloses as discussed above and does not directly disclose the mounting portion being pivotally attached. Francisco teaches using a mounting portion (28) pivotally attached mounting receptacle (18, figure 7) to allow the vehicle and trailer to be further apart during hitching.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klemetsen as taught by Francisco to include the mounting portion being pivotally attached to the receptacle. Such a modification would allowed the vehicle and trailer to be further apart during hitching.

14. Claims 21-36 are rejected under 35 U.S.C. 103(a) as being unpatentable in view Klemetsen and Applicant's admission that "the inventions are not patentably distinct," (Paper No. 4, page 3, line 6).



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15. Claims 57 and 58, as understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Klemetsen in view of Howell (U.S. 6,170,723). Klemetsen discloses as discussed above and does not directly disclose a storage compartment. Howell a storage compartment to store objects. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klemetsen as taught by Howell to include the mounting portion integrally formed with a wall of the storage compartment. Such a modification would have prevented the metal apparatus from rattling around within the box.

16. Claims 57 and 58, as understood by the Examiner, are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Klemetsen in view of a pickup truck. Klemetsen discloses as discussed above and does not directly disclose a storage compartment. The Examiner takes Official Notice that pickup trucks have a storage compartment (the entire large back compartment) and are old and well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klemetsen to attach the apparatus on a pickup truck thereby creating a mounting portion integrally formed with a wall of the storage compartment (mounting 4 to a bottom plate directly under the pickup bed). Such a modification would have placed Klemetsen's 4 further underneath the truck thereby adding structural integrity to the connection.

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***Response to Arguments***

17. Applicant's arguments filed with the amendment on June 16, 2001 (Paper No. 6) have been fully considered but they are not persuasive.

18. In view of Applicant's amendments and remarks, objections to the drawings, the enablement rejection, and the 35 U.S.C. 112 2<sup>nd</sup> paragraph for claim 3 are withdrawn.

19. The 35 U.S.C. 112 1<sup>st</sup> paragraph rejection for claim 39 is present as an alternative position to Applicant's arguments. Applicant is request to choose either: the functional language is given little patentable weight or the 35 U.S.C. 112 1<sup>st</sup> paragraph rejection will be maintained. See the 35 U.S.C. 112 1<sup>st</sup> paragraph rejection above.

**The Anticipation Rejections Based Upon Klemetsen**

20. It is the Examiner's position that the preamble is not afforded patentable weight.

21. First, a preamble is generally not accorded much patentable weight where it merely recites the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the structural limitations are able to stand alone. *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).<sup>2</sup> If the preamble adds no limitations to those in the body of the claim, the preamble is not itself a claim limitation and is irrelevant to

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<sup>2</sup> See also *In re Hirao*, 535 F.2d 67, 190 USPQ 15, 16-17 (CCPA 1976) (holding that the preamble was non-limiting because it merely recited the purpose of the process, which was fully set forth in the body of the claim).

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proper interpretation of the claim. See *IMS Technology Inc. v. Haas Automation Inc.*, 54 USPQ2d 1129, 1137 (Fed. Cir. 2000) citing *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999).<sup>3</sup> If the body of the claim sets out the complete invention, and the preamble is not necessary to give “life, meaning and vitality” to the claim, “then the preamble is of no significance to claim construction because it cannot be said to constitute or explain a claim limitation.” See *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 58 USPQ2d 1508, 1512 (Fed. Cir. 2001) citing *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1166 (Fed. Cir. 1999).<sup>4</sup>

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<sup>3</sup> “[W]here a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation.” *STX LLC v. Brine Inc.*, 54 USPQ2d 1347, 1349 (Fed. Cir. 2000) citing *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997).

<sup>4</sup> Compare with *Rowe v. Dror* where a patentee uses the claim preamble to recite structural limitations of his claimed invention, the PTO must give effect to that usage. *Rowe v. Dror* 112 F.3d 473, 42 USPQ2d 1550, 1553, (Fed. Cir. 1997) citing both *Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). If this were the case, a 35 U.S.C. 112 2<sup>nd</sup> paragraph rejection would be in order for a combination/subcombination claim. This is the basis for the Examiner’s alternative rejections.

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22. In this case, it is the Examiner's factual determination<sup>5</sup> that the preamble is not needed for completeness, the body of the claims is clear without the preamble, and is not necessary to give life meaning and vitality to the claim. In claim 1, "a mounting portion" and a trailer hitch mounting portion are all that is necessary for completeness. The Examiner notes that the body of the claim is neither indefinite nor unclear as evidenced by a lack of a 35 U.S.C. 112 2<sup>nd</sup> paragraph rejection in claim 1. Therefore, as a matter of law, the preamble is not a claim limitation. For these reasons alone, the rejections are maintained and although argued with respect to claim 1, these arguments apply to all subsequent claims.

**Even If Limitations, the Limitations are Functional Limitations Given Little Patentable Weight**

23. Applicant argues "that nowhere does Klemetsen disclose ... a device for storing a trailer hitch apparatus or a device for use with a storage compartment." The Examiner disagrees.

24. First, it is well known that the applicant is free to recite features of an apparatus either structurally or functionally. *In re Swinehart*, 439 F.2d 210, 212, 169 USPQ 226, 228 (CCPA

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<sup>5</sup> Whether a preamble of intended purpose constitutes a limitation to the claim is a factual determination. See *Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995) citing *In re Stencel*, 828 F.2d 751, 754, 4 USPQ2d 1071, 1073 (Fed. Cir. 1987).

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1971). In this case, Applicants arguments are clearly based upon the functional limitations or “use” of a structural apparatus.

25. Next, if the prior art is capable of performing the claimed function—even if not directly disclosed—it anticipates. *In re Schreiber*, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997) (Applicant’s popcorn dispenser was rejected with an oil can because the functional limitations were inherent in the reference).

In this case, it is the Examiner’s factual determination<sup>6</sup> that the receptacle (4) is clearly capable of storing a trailer hitch inside it (e.g. while the trailer is in a garage), is capable of mating with a female connector (the cup shape on the end of a trailer which attaches to the ball), and) is capable of performing the other claimed functional limitations. Once this prima facie case of anticipation has been established, the burden shifts to the Applicant to show that the prior art structure does not inherently possess the functionally defined limitations of his claimed apparatus. *Id* at 1478 and 1432. Applicants have not successfully rebutted this presumption. For these reasons alone, the rejections are maintained and although argued with respect to claim 1, these arguments apply to all subsequent claims.

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<sup>6</sup> Whether a claim limitation is inherent in a prior art reference for purposes of anticipation is a question of fact. See *In re Schreiber* at 1477 and at 1431.

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### **Structural Limitations**

26. Applicant next argues “[n]owhere does Klemetsen disclose or claim a mounting portion . . .” The examiner disagrees. Element 2 in figure 3 in Klemetsen clearly discloses a mounting portion.

27. Applicant is reminded that during examination, claims are given their broadest reasonable interpretation. See MPEP §2111 and *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Guens*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Although the Applicant’s and the Examiner’s “mounting portion” is clearly different, using the broadest reasonable interpretation, element 2 is clearly a mounting portion.

28. Furthermore, Applicant’s argument that “Klemetsen figures also fail to disclose a ‘mounting portion’ ... when compared to Applicant’s figures” is immaterial since the comparison is between the prior art and Applicant’s claimed subject matter—not the drawings. See *Celeritas Techs. Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1360, 47 USPQ2d 1516, 1522 (Fed. Cir. 1998).

### **Non-Analogous Art**

29. Comparison for determining a §103 rejection is between the prior art and the claimed invention—not Applicants’ specification. *Stratoflex, Inc. v. Aeroquip Corp.* 713 F.2d 1530, 1537,

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218 USPQ 871, 877 (Fed. Cir. 1983). In this case, Applicant is claiming “a device” thereby opening the prior art to a broad range of analogous art. Therefore, because the references are analogous art, the rejections are maintained.

30. Additionally, after a more careful review of *In re Oetiker*, the Examiner notes that *In re Oetiker* assumed that the reference was not within the field of Applicant’s endeavor and went on to discuss the nature of the problem to be solved. See *In re Oetiker*, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1445-46 (Fed. Cir. 1992). This is not our case.

Our issue is whether or not the claimed invention is within the field of Applicant’s endeavor. The Examiner asserts that because Applicant is claiming a device, other devices are within the field of Applicant’s endeavor.

31. Applicant next argues “[i]f it were correct that Klemetsen and Francisco, as to a much lesser extent Howell, are analogous to the present invention merely on account of being analogous to each other, then we would see a complete end to invention in the area of trailer hitches because Klemetsen and Francisco would, in the analysis of the Office Action, preempt the entire field of trailer hitch inventions.” The Examiner disagrees.

32. First, the three references do not preempt all inventions—only inventions where the references disclose all the claimed features.

33. Second, while the Examiner asserts above that the references are within the field of Applicant’s endeavor and therefore analogous, alternatively, even if not within the field of

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Applicant's endeavor, the Examiner asserts that the references need only be analogous to each other. In this case, the references clearly are analogous to each other.

### **Obviousness Rejections**

34. Applicant argues "no showing exists in Klemetsen of why it is within the knowledge of one skilled in the art to modify Klemetsen and render Applicant's application obvious." Even if true, there is no requirement that the prior art contain an express suggestion to combine known elements to achieve the claimed invention. *In re Jones*, 958, F.2d 347, 351, 21 USPQ2d 1941, 1943-44 (Fed. Cir. 1992).

35. There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F3d 1350, 1357, 47 USPQ2d 1453, 1457-1458 (Fed. Cir. 1998). Of these three, the second—the teachings of the prior art—is where we focus.

The teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. *WMS Gaming, Inc. v. International Game Tech.*, 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999).

36. In this case, it is the Examiner's position, that prior art as a whole (which also includes Klemetsen, Francisco, Howell), discloses the motivation. Instead of welding element 4 to 2, one could bolt the two together. The prior art as a whole shows how bolts and pins are used to hold two elements together.



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37. Applicant also argues there is no “reasonable expectation for success in modifying Klemetsen because there is no suggestion to modify Klemetsen.” This statement of law is incorrect since one could have a reasonable expectation of success with or without motivation to combine the references.<sup>7</sup> As discussed above Klemetsen need not disclose the motivation.

38. Regarding the reasonable expectation of success, it is the Examiner’s position that a person of ordinary skill in the art would clearly know how to attach two elements (4 and 3) with bolts or screws and would clearly know how to combine Klemetsen with Francisco (placing Francisco element 28 within Klemetsen element 4; see Francisco figure 4).

39. Because Applicant has maintained his position that claims 21-28 and 29-36 are not patentably distinct from the device in claims 1-20, the Examiner reiterates his position that 21-36 stand or fall with the corresponding rejections in claims 1-20.

### ***Conclusion***

40. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

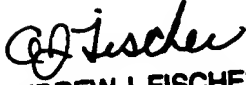
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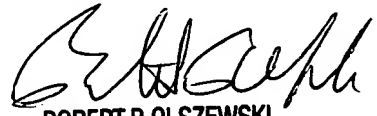
<sup>7</sup> The Examiner notes Applicant’s own response on page 4 sets out the two of the three obviousness requirements (No. 2 and No. 3) as being separate and independent from each other.

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Fischer whose telephone number is (703) 305-0292.

  
ANDREW J. FISCHER  
PATENT EXAMINER

 6/28/01  
ROBERT P. OLSZEWSKI  
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AJF  
June 28, 2001